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Ralf Wiedemann

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EXAMINER

YOO, REGINA M

ART UNIT

PAPER NUMBER

1797

MAIL DATE

DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,207	Applicant(s) WIEDEMANN ET AL.	
	Examiner REGINA YOO	Art Unit 1797	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-22 is/are pending in the application.
- 4a) Of the above claim(s) 6, 11, 13-15, 17-19, 21 and 22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-10, 12, 16 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

FINAL ACTION

Response to Amendment

The amendment filed on 10/23/2009 has been received and claims 1-4 and 6-22 are pending.

Election/Restrictions

1. Claims 6, 1, 13-15, 17-19 and 21-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to nonelected groups and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/30/2007.

Claim Objections

2. Claims 6, 11, 13-15 and 17-19 are objected to because of the following informalities: the claim status identifier should indicate that these claims are "Withdrawn – Currently Amended" for claim 6 rather than "Currently Amended" and "Withdrawn" rather than "Previously Presented" for claims 11, 13-15 and 17-19. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 7-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Reeves (6372126).

As to Claim 1, Reeves ('126) discloses an automatic detergent dispensing device (10) comprising a detergent bar (14) comprising a detergent composition, a detergent additive, or a detergent composition which includes a detergent additive (see Col. 3 line 61 and Col. 4 lines 7-8), said detergent bar (14) disposed within a channel (20), wherein the detergent bar (14) completely fills at least a portion of the channel across the entire bore of the channel (20) (see for example Figures 6 and 9), the channel (20) having an open end (the top end of channel 20) and an inlet aperture (36) which is in communication with said open end (see Figures 1-6, specifically Figure 2).

As to Claim 2-4, Reeves ('126) discloses that the channel (20) is a cylindrical tube (see Figures 1-10), wherein the channel (20) has a uniform bore, along its length or at least along the portion filled by the detergent bar (14) (see Figures 1-10).

As to Claims 7-9, Reeves ('126) discloses that the channel (20) has a plurality of open ends (at the top end of 20 and at the bottom end of 20 via 34, 38, 183 or 214) each of which being in communication with an inlet aperture (36) (see Figures 2-3 and 7).

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As to Claims 10 and 12, Reeves ('126) discloses that the channel (20) has a plurality of secondary apertures (34, 38, 183) (see Figures 2-3).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 1-4, 7-10 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Jordan (4338191).

As to Claim 1, Jordan ('191) discloses an automatic detergent dispensing device (see entire document, particularly Figures 1-32) comprising a detergent bar comprising a detergent composition, a detergent additive, or a detergent composition which includes a detergent additive (see Col. 3 lines 48-63), said detergent bar disposed within a channel (26), wherein the detergent bar completely fills at least a portion of the

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channel across the entire bore of the channel (26), the channel having an open end (top end of 26; see Figures 1-2 and 19, and Col. 5 lines 3-5 – which indicates that a cap 54 is optional) and an inlet aperture (28) which is in communication with said open end (top end of 26).

In the event that Jordan ('191) does not disclose to sufficient extent that the detergent bar completely fills at least a portion of the channel across the entire bore of the channel 26, it was well known in the art at the time of invention to provide a detergent bar within a channel of an automatic detergent dispensing device and it would have been obvious to one of ordinary skill in this art at the time of invention to provide a detergent bar of such a size as to completely fill the channel bore.

As to Claims 2-4, Jordan ('191) discloses that the channel has a uniform bore of cylindrical tube configuration (see Col. 3 lines 48-49), along its length or at least along the portion filled by the detergent bar (see Figures 2, 9, 11 and 19).

As to Claim 7-9, Jordan ('191) discloses that the channel (26) has a plurality of open ends (apertures on end plate 30) each of which being in communication with an inlet aperture (28 and the openings provided on 30) and is deemed to be an open end in addition to the top open end of channel/tube 26 (see Figure 3 and Col. 4 lines 3-7).

As to Claims 10 and 12, Jordan ('191) discloses the channel has a plurality of secondary apertures (see Figure 3 – openings on plate 30).

8. Claims 16 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jordan (4338191) or Reeves (6372126).

As to Claim 16, while neither Jordan ('191) nor Reeves ('126) appears to specifically disclose that the secondary aperture possesses a diameter of less than 5mm, it would have been obvious and well within the purview of one of ordinary skill in this art at the time of invention to modify the diameter of secondary aperture (on the plate 30 for Jordan or for the aperture 183 of Reeves) to less than 5mm in order to ensure adequate water flow into the channel but at the same time to retain the detergent bar efficiently. Only the expected results would be attained (see MPEP §2144.04 section IV (A)).

As to Claim 20, while Jordan ('191) appears to teach that the container 12 is made out of a water insoluble material which is a moldable plastic material such as high density polyethylene (see Col. 3 lines 30-31), neither Jordan ('191) nor Reeves ('126) does not appear to specifically teach that the channel is made out of the same material as well.

It was well known in the art at the time of invention to produce plastic detergent dispensing devices/channels from same or similar materials and thus, it would have been obvious to one of ordinary skill in this art at the time of invention to utilize the same material to manufacture the channel that is placed within the container 12 in the device of Jordan in order to function properly (e.g. not to become damaged by the detergent

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ingredients). Moreover, it would have been obvious and well within the purview of one of ordinary skill in this art at the time of invention to provide a water-resistant or water insoluble material for the channel in the device of Reeves so that the device is able to function as intended without being affected by its surrounding (i.e. water). Only the expected results would be attained.

Response to Arguments

9. Applicant's arguments filed 10/23/2009 have been fully considered but they are not persuasive.

Specifically, as to Applicant's argument "that Reeves' chlorine tablets do not anticipate the presently claimed automatic dishwashing detergent" in lines 6-9 on page 6 of Remarks, Examiner would disagree since the Applicant's disclosure in paragraph [0039] on page 3 of the Published Application indicates that the detergent composition contains one or more components such as bleaches and as chlorine tablets of Reeves is a well known type in the art which contains calcium hypochlorite, a known oxidizing and bleaching agent, the chlorine tablet of Reeves fully meet the claimed limitation of an "automatic dishwashing detergent composition".

As to Applicant's argument in lines 10-21 of page 6 of Remarks that "Reeves is decidedly not adapted to be used as an automatic washing machine dispensing device, but rather is used for dispensing chlorine to waste water treatment systems, swimming pools and the like", Examiner would indicate that as Reeves discloses in Col. 5 lines 45-49 that the dispensing device 10 is also used to treat water in other types of water

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systems, the Reeves' device is capable of being structurally adapted for use with an automatic dishwashing machine. In addition, Examiner would further point out that the feature about which Applicant's argument in this portion of Remarks is directed (i.e. that the dispensing device is for use "in an automatic dishwashing machine") is not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, such argument is in regards to the intended use of the apparatus and it is noted that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art (see MPEP § 2114). Currently, there is not any other structurally distinguishing features between the claimed invention and from the prior art and if the prior art structure is capable of performing the intended use, then it meets the claim.

Similarly, in regards to Applicant's argument that "the Examiner interprets the "treating agent" of Jordan as equivalent to the detergent of the present invention...[and] Jordan never teaches an automatic dishwashing machine detergent" in page 7 lines 9-11, Examiner would disagree since the Applicant's disclosure in paragraph [0039] on page 3 of the Published Application indicates that the detergent composition contains one or more components such as bleaches and as "Sanuril Tablets" of Jordan (see Col. 3 lines 50-52 and 58-60) is a well known type in the art which contains calcium

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hypochlorite, a known oxidizing and bleaching agent, the tablets of Jordan fully meet the claimed limitation of an “automatic dishwashing detergent composition”.

In addition, Examiner would disagree and indicate that Applicant’s argument that Jordan’s dispensing device is not teaching “an automatic dishwashing detergent dispensing device” and that “there is nothing in Jordan that would suggest to the skilled person that Jordan’s device could be adapted for use in an automatic dishwashing machine” in the second full paragraph on page 7 of Remarks, is directed to the intended use of the device. Examiner would point out that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art (see MPEP § 2114). Currently, there is not any other structurally distinguishing features between the claimed invention and from the prior art and if the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to REGINA YOO whose telephone number is (571)272-6690. The examiner can normally be reached on Monday-Friday, 10:00 am - 7:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth L McKane/
Primary Examiner, Art Unit 1797

RY